

Chapter 4

Communications

One of the most important aspects of any campaign is communicating with the voters. The Political Reform Act **does not** regulate the **truth or accuracy** of political communications, but does require reporting of most payments in connection with flyers, mailers, billboards, and newspaper, radio and television advertising. Identification rules also may apply.

Contributions and Independent Expenditures

Generally speaking, when someone other than the candidate or his or her committee pays for a communication supporting the candidate, the candidate has received a nonmonetary contribution unless the payment was not made “at the behest of” the candidate. Payments for communications that support a candidate by the use of express advocacy, which are not made at the behest of the candidate, are called “independent expenditures.” In these cases, the candidate being supported is not required to report the payments, although the person making them may have reporting obligations. In addition, payments for certain other types of communications may not be reportable at all, or may be subject to special reporting requirements. (See Chapter 8.)

Whether a communication is a contribution, an independent expenditure, or some other type of reportable payment depends on several factors, including whether the communication “expressly advocates” the election or defeat of a clearly identified candidate or ballot measure. The information and examples provided below may be of assistance in making that determination. However, it is impossible to address all of the types of communications in a campaign. If presented with specific facts, FPPC staff can provide assistance.

When reviewing this section, it is important to remember the following:

- Contributions from one state candidate to another state candidate are subject to contribution limits.
- A candidate may not make independent expenditures from campaign funds to support or oppose another candidate.
- Communications paid for by a candidate’s controlled committee that support the controlling candidate, or oppose his or her opponent, are not considered contributions or independent expenditures.
- In most cases, when a noncontrolled primarily formed committee pays for a communication that supports or opposes a candidate or ballot measure, the payment is a contribution or independent expenditure.

Express Advocacy

A communication *expressly advocates* support or opposition of a clearly identified candidate when it uses words such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for,” etc. The law further provides that a communication that does not contain express advocacy is also an independent expenditure if the communication, taken as a whole, unambiguously urges a particular result in an election. Courts have applied a narrowing construction to the statutory language, and the law is generally interpreted to require express advocacy to be considered an independent expenditure. (*The Governor Gray Davis Committee v. American Taxpayer Alliance*, 102 Cal.App.4th 449 (2002).)

Clearly Identifies

A communication *clearly identifies* a candidate or measure when the candidate's name, photograph, or status as a candidate or officeholder is used, or the measure's name, popular title, or official title is used. Some flyers may mention a group of candidates by some well-defined characteristic of the group. Even if no specific names are used, these, too, may be communications which *clearly identify* candidates.

Example *An individual paid \$4,000 for a newspaper ad stating "Vote for Joe Winner." The communication expressly advocates support for a clearly identified candidate and must be reported either as a contribution if it was made at the candidate's behest or an independent expenditure if it was not made at the candidate's behest.*

Later, the same individual paid \$2,000 for post card-sized flyers that simply stated, "Vote on Election Day." This communication is not reported as a contribution or independent expenditure because it did not expressly advocate support of or opposition to a candidate or measure.

A communication that expressly advocates support of or opposition to a clearly-identified candidate or measure is a contribution, if made at the behest of the candidate or committee, or independent expenditure, if not made at the behest of the candidate or committee.

Made at the Behest

A payment is *made at the behest* of a candidate or committee if the payment is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express prior consent of the candidate or committee or an agent of the candidate or committee, and the arrangement occurs prior to the making of the communication.

Expenditures made at the behest of a candidate or committee include expenditures made by a person other than the candidate or committee, to pay for a communication relating to one or more clearly identified candidates or ballot measures if it is created, produced, or disseminated:

- After the candidate or committee has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication, or
- After discussion and agreement between the candidate or committee and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

An expenditure is presumed to be made at the behest of a candidate or committee if it is:

- Based on information about the candidate's or committee's campaign needs or plans provided to the expending person by the candidate or committee; or
- Made by or through any agent of the candidate or committee in the course of the agent's involvement in the current campaign; or
- For a communication relating to a clearly-identified candidate or ballot measure when:
 - The person making the expenditure retains the services of a person who provides either the candidate or the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for the same election, or
 - The communication replicates, reproduces, republishes, or

disseminates, in whole or in substantial part, a communication designed, produced, paid for, or distributed by the candidate or committee.

An expenditure is **not made at the behest** of a candidate or committee just because:

- A person interviews the candidate or candidate's agent on issues affecting the person making the expenditure, or
- The person making the expenditure obtains a photograph, biography, position paper, or press release, or similar material is provided by the candidate or his or her agent, or
- The person making the expenditure has made a contribution to the candidate or committee, or
- A person makes an expenditure in response to a general, nonspecific request for support by a candidate or committee, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure, or
- The person making the expenditure has invited the candidate or committee to make a public appearance before the person's members, employees, shareholders, or their families provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure, or
- A person informs a candidate or committee that the person has made an expenditure, provided that there is no exchange of information, not otherwise available to the public, relating to details of the expenditure, or
- The expenditure is made at the request or suggestion of the candidate or committee for the benefit of another candidate or committee.

Example *Citizens for Winner, a non-controlled committee primarily formed to support Joe Winner's candidacy, printed campaign literature stating, "Vote for Joe Winner." The communication included a copy of a photograph the committee obtained from the public information counter at Joe's campaign headquarters. Joe did not in any other way coordinate with the committee in producing the campaign literature. The committee made an independent expenditure, not a contribution to Joe's campaign.*

On the other hand, if the committee contacted Joe Winner and arranged for a professional photographer to meet with him for the purpose of taking photographs for the mailer, the committee would be making a nonmonetary contribution to Joe's campaign.

Determination Based on Facts

As the previous examples illustrate, whether a communication is deemed to be express advocacy and whether the communication is made at the behest of the affected candidate or measure committee, are factual determinations based on the text of the communication and the circumstances associated with it. Although determinations must be made on the facts of each particular situation, the following examples address common situations that may arise in a campaign.

Reporting

There are distinctly different reporting requirements for contributions and independent expenditures.

When a person or group of persons makes expenditures for a communication at the behest of a candidate or committee, the candidate or committee must report the receipt of a nonmonetary contribution. The person making the expenditure may also have to file reports.

Candidates and committees who are the beneficiaries of independent expenditures do not report them. However, the person making the expenditure may have filing obligations.

Example *During Joe Winner's campaign, two newspaper advertisements supporting Joe were published without his knowledge or consent. Since the payments for these communications were not made at his behest, they were independent expenditures by the person(s) funding the ads and were not reportable by Joe's campaign. The person(s) who paid for the ads may have a filing obligation.*

Endorsements

An endorsement of a candidate or measure **may** become a contribution or an independent expenditure when a payment is made in connection with the endorsement.

Example *The president of a state police officers' association announces at its annual meeting that the association endorses John Law for Attorney General. Merely making an oral endorsement is not a contribution or independent expenditure to John Law.*

Closer to the election, at the request of candidate John Law, the association mails a special flyer to the voters announcing its endorsement of him. Since the mailing was made at the behest of the candidate, the association has now made a nonmonetary contribution to John Law.

Frequently, a candidate will publish his or her endorsement by another official. As long as the communication does not advocate the election of the endorsing official (or the defeat of that official's opponent), a payment made to communicate the endorsement is not a contribution to the endorsing candidate or official, even though the endorsement was made at the behest of both individuals.

Example *A legislative candidate paid for a mailing which quoted the Governor's verbal endorsement of his candidacy. Although the Governor was also on the ballot, the flyer did not ask voters to vote for the Governor. The flyer was not a contribution to the Governor's committee; nor did the Governor make a contribution to the legislative candidate.*

If a candidate pays for a communication supporting his or her own candidacy that also supports or opposes a ballot measure, the payment is not a contribution or independent expenditure made in connection with the ballot measure.

There are times when a candidate pays for a communication which supports another candidate, but the payment is not made at the behest of the endorsed candidate. If the candidate paying for the communication also is included in the communication, and the non-paying candidate is listed on the same ballot as the paying candidate, and the communication is targeted only to the potential voters in the paying candidate's district, no independent expenditure is made.

Example *Lynda Isherwood, a State Senator running for reelection, sent out a flyer to registered voters in her district asking them to support her candidacy. The flyer also encouraged the voters to vote for Gary Swanson for Governor, although this endorsement was not made at Gary's behest. Because the gubernatorial election and State Senate election would appear on the same ballot for those living in Lynda's district, and the flyer was sent only to voters in Lynda's district, the payment for the flyer is not an independent expenditure.*

Non-Contributions

Debates: A payment for a debate or similar forum to which at least two candidates running for the same office are invited is not

a contribution to the candidates, if the debate is sponsored by a nonpartisan organization.

Example *The League of Women Voters invited all candidates for Assembly District 81 to speak at a forum. Only one candidate attended. Because at least two candidates running for the same office were invited, the cost of the meeting is not a contribution to the candidate who attended.*

Similarly, a payment for a debate or forum sponsored by a political party or a committee affiliated with a political party is not a contribution if a majority of the candidates for the party's nomination are invited to participate.

Meetings: A payment made by a bona fide service, social, business, trade, union, or professional organization for reasonable overhead expenses associated with a regularly-scheduled meeting at which a candidate speaks is not a contribution if the organization pays no additional costs in connection with the speaker's attendance.

Example *At a union's regularly-scheduled monthly meeting, one candidate was invited to solicit votes. The union did not incur any additional costs in connection with the speaker's presentation and, thus, no contribution was made.*

Member Communications: Payments made by an organization or its sponsored committee for a communication that supports or opposes a candidate are not contributions or expenditures as long as the communication is made only to the organization's members, employees, or shareholders, or the families of its members, employees, or shareholders. The payments may not be for general public advertising, such as billboards, newspaper ads, or radio or television ads. If made by the organization's sponsored committee, the

committee would report the payments as being made for general member communications.

Example *Your campaign consultant asks a labor organization to send a mailing supporting your election. The mailing will be sent only to the organization's membership. The mailing is not a contribution to you. Later, the campaign consultant asks the organization to send the mailing to all registered voters in your district. The mailing to the voters is a contribution to you.*

Payments made by a political party for a communication that supports a candidate are not contributions to the candidate as long as the communication is distributed only to the party's members, employees, and families of its members and employees. However, the party must report the payments as if they were contributions or independent expenditures.

Example *The Green Party pays for a mailing supporting your candidacy to all of its members five days before your election. The cost of the mailing exceeds \$1,000. The Party must file a late contribution report. You are not required to disclose the mailing as a contribution.*

News Stories: A payment for the cost of publishing or broadcasting a news story, commentary, or editorial is not a contribution when the payment is made by a federally regulated broadcast outlet or a regularly published newspaper, magazine or other periodical of general circulation that routinely carries news, articles, and commentary of general interest.

Non-Political Communications: A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, is not a contribution to the candidate if the communication:

Sender Identification

Committee to Elect Waters Mayor
10 Parkway Plaza
Playa del Sol, CA 95888



Sharon Eshenaur
620 McFadden Street
Playa del Sol, CA 95888

only the voting records are published, the communication is not considered a contribution or an independent expenditure.

Identification Requirements for Mailings

- Does not contain express advocacy; and
- Does not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and
- Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent.

If an individual or entity (including a committee) pays \$50,000 or more for a communication that identifies a state candidate but does not expressly advocate the candidate's election or defeat, the individual or entity may be required to file Form E-530 with the Secretary of State. (See Chapter 8.)

Voter Registration: A payment made at the behest of a candidate as part of voter registration or get-out-the-vote activities is not a contribution if the communication does not expressly advocate the candidate's election.

Example *At the behest of an elected official, an organization paid for a voter registration booth at a local fair. No other literature was distributed at the booth. The payment for the voter registration booth was not a contribution to the official.*

Voting Records: An entity may publish the voting records of public officials. As long as

Contribution Solicitations

When a candidate or controlled committee solicits contributions in writing, the solicitation must identify the name of the controlled committee as well as the specific office and term of office for which contributions are being solicited.

Any solicitation for contributions to an officeholder account (see Chapter 1) must include the following:

"For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

Mass Mailings

A "mass mailing" is more than 200 similar pieces of mail sent in a single calendar month. The Political Reform Act contains sender identification requirements for mass mailings that are "mailed" (e.g., USPS, FedEx) to a person's home, business, or post office box.

Solicitation letters, notices of fundraising events, newsletters sent by the candidate or committee, and other types of campaign literature are common types of mass mailings.

The Political Reform Act does not regulate the **truth or accuracy** of mail or other

campaign-related advertisements or materials.

Sender Identification Requirements

Sent by One Candidate or Committee

The name of the candidate, his or her street address, city, state, and zip code must be placed on the outside of each piece of mail in no less than 6-point type and in a color or print which contrasts with the background so that it is easily read. If a single candidate's controlled committee is sending the mailer, the name of the committee may be placed on the outside of the mailer if the committee's name contains the name of the candidate. A post office box may be used as the address only if the committee's street address is on its Statement of Organization (Form 410) on file with the Secretary of State.

Sent by Two or More Candidates or Committees

The name and address of the candidate (or committee, if its name includes the candidate's name) who is paying the greatest share of the mass mailing, including costs for designing, postage, and printing, must be placed on the outside of each piece of mail as described above.

If two or more candidates pay equally for the mailer, the name and address of at least one of the candidates (or committees, as noted above) must be shown on the outside as described above, and the names and addresses of all candidates (or committees) must appear on at least one insert.

Required Recordkeeping

For each mass mailing, the following must be retained for a period of four years:

- A sample of the mailing;
- A record of the date(s) the mailing was sent;
- The number of pieces sent; and
- The method of postage used.

Answering Your Questions

- Q. *Must the committee's identification number appear on a mailing?*
- A. No.
- Q. *If an organization includes a copy of a candidate's flyer in its regularly-published newsletter, is the candidate required to be identified on the outside of the mailer?*
- A. No. The candidate's name and address must be identified on the flyer only.
- Q. *A committee has more than one address. Which address must be used on mass mailings?*
- A. Any address that also appears on the committee's Statement of Organization (Form 410) on file with the Secretary of State may be used.
- Q. *A committee pays for a candidate's mailing as a nonmonetary contribution. Which committee must be identified on the outside, the committee paying for the mailing or the candidate's committee?*
- A. Only the committee that pays for the mailing is required to be identified on the outside of the mailing.
- Q. *A labor union pays for a mailing advocating the election of a State Assembly candidate. The mailing list includes both union members and non-union members and 20% of the mailing costs are attributed to non-union members. Must the candidate report the full cost of the mailing as a non-monetary contribution?*
- A. No. The candidate may pro-rate the cost and report as a nonmonetary contribution the mailing costs for the non-union members.
- Q. *If a committee is sending a post card-type mailing, may the name of the committee appear only once?*
- A. Yes.

Q. *Where on the outside of the mailing must the candidate or committee identification be placed?*

A. There is no specific requirement for location of the identification, as long as it appears somewhere on the outside of the mailing.

Identification Requirements for Telephone Calls and Other Advertisements

In addition to the rules for mass mailings, the Political Reform Act requires identification and disclosure on certain other advertisements and communications.

Candidates and committees that use campaign funds to make 500 or more phone calls in support of or opposition to candidates or ballot measures must disclose during the phone call that the candidate or committee authorized or paid for the call. Committees may not contract with phone bank vendors that do not disclose this information. This requirement does not apply to calls that are personally made by the candidate, campaign manager, or volunteers. A script of the call or a copy of the recorded phone message must be kept for four years.

When any committee makes expenditures totaling \$5,000 or more for an individual's appearance in a printed, televised, or radio advertisement, or in a telephone message, that supports or opposes the qualification or passage of a state or local ballot measure, the advertisement must include a statement that the individual is being paid by the campaign or its donors. In addition, the Paid Spokesperson Report (Form 511) must be filed. (See Chapter 8.)

No identification or disclosure is required by the Political Reform Act on the following items when paid for by a candidate in support of his or her own campaign:

- Lawn signs;

- Billboards;
- Campaign literature that is distributed by some means other than mail, such as handouts at fundraisers or shopping malls, or door hangers;
- Radio or television advertisements (these are regulated by the Federal Communications Commission); or
- E-mails, faxes, or website pages.

Authority

The following Government Code sections and Title 2 regulations provide authority for the preceding information in this chapter:

Government Code Sections

82015	<i>Contribution.</i>
82025	<i>Expenditure.</i>
82031	<i>Independent Expenditure.</i>
82041.5	<i>Mass Mailing.</i>
82044	<i>Payment.</i>
82047	<i>Person.</i>
84211	<i>Contents of Campaign Statement.</i>
84305	<i>Requirements for Mass Mailing.</i>
84310	<i>Identification Requirements for Telephone Calls.</i>
84501	<i>Advertisement.</i>
84503	<i>Disclosure; Advertisement For or Against Ballot Measures.</i>
84504	<i>Identification of Committee.</i>
84505	<i>Avoidance of Disclosure.</i>
84506	<i>Independent Expenditures; Advertisements.</i>
84511	<i>Ballot Measure Ads; Paid Spokesperson Disclosure.</i>
85310	<i>Communications Identifying State Candidates.</i>
85312	<i>Communications to Members of an Organization.</i>
85500	<i>Independent Expenditures; 24-Hour Disclosure; Coordination.</i>
85501	<i>Prohibition on Independent Expenditures by Candidate Controlled Committees.</i>

Title 2 Regulations

- 18215 *Contribution.*
- 18225 *Expenditure.*
- 18225.7 *Made At the Behest of.*
- 18401 *Required Recordkeeping for
Chapter 4.*
- 18435 *Definition of Mass Mailing and
Sender.*
- 18440 *Telephone Advocacy.*
- 18450.1 *Definitions. Advertisement
Disclosure.*
- 18450.4 *Content of Disclosure Statements.
Advertisement Disclosure.*
- 18450.11 *Spokesperson Disclosure.*
- 18523.1 *Written Solicitation for
Contributions.*
- 18531.63 *Elected State Officeholder
Contribution Cumulation.*
- 18531.7 *Payments for Communications --
Section 85312.*
- 18550.1 *Independent and Coordinated
Expenditures.*